

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JOSHUA WITHERS,

Plaintiff,

- against -

HIVE MEDIA GROUP LLC

Defendant.

Docket No. _____

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff Joshua Withers (“Withers” or “Plaintiff”) by and through his undersigned counsel, as and for his Complaint against Defendant Hive Media Group LLC, (“Hive” or “Defendant”) hereby alleges as follows:

NATURE OF THE ACTION

1. This is an action for copyright infringement under Section 501 of the Copyright Act. This action arises out of Defendant’s unauthorized reproduction and public display of a copyrighted photograph of American singer, songwriter, guitarist and drummer Josh Tillman otherwise known as Father John Misty, owned and registered by Withers, a Los Angeles based photojournalist. Accordingly, Withers seeks monetary relief under the Copyright Act of the United States, as amended, 17 U.S.C. § 101 *et seq.*

JURISDICTION AND VENUE

2. This claim arises under the Copyright Act, 17 U.S.C. § 101 *et seq.*, and this Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

3. This Court has personal jurisdiction over Defendant because Defendant resides in and/or are transacting business in New York.

4. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b).

PARTIES

5. Withers is an award-winning professional photojournalist in the business of licensing his photographs to online, print, and television stations for a fee, having a usual place of business at 4073 Madison Avenue, Culver, City, CA 90232. Withers has won numerous awards including but not limited to the 2015 Danny Clinch Concert Photographer Contest award, the 2014 Ultimate Music Moment Photography Concert award, and the 2012 Communications Arts Award of Excellence in Photography. Withers' photographs have appeared in galleries around the United States including the Laguna Arts Museum and Harold's Gallery.

6. Upon information and belief, Hive is a foreign limited liability company duly organized and existing under the laws of the State of Delaware, with a place of business at 1345 Encinitas Blvd. #828, Encinitas, California, 92024. Upon information and belief, Hive is registered with the New York Department of State Division of Corporations to transact business in New York and has a registered agent to accept process in New York. At all times material hereto, Hive has owned and operated the website at the URL: www.purevolume.com, (the "Website").

STATEMENT OF FACTS

A. Background and Plaintiff's Ownership of the Photograph

7. Withers photographed American singer Josh Tillman otherwise known and Father John Misty (the "Photograph"). A true and correct copy of the Photograph is attached hereto as Exhibit A.

8. Withers is the author of the Photograph and has at all times been the sole owner of all right, title and interest in and to the Photograph, including the copyright thereto.

9. The Photograph is registered with the United States Copyright Office and was given registration number VA 1-860-833.

B. Defendant's Infringing Activities

10. Upon information and belief, on or about November 4, 2015 Hive ran an article on the Website entitled *WATCH: Father John Misty Performs "Bored in The USA" On Letterman, Announces New Album*. See <http://www.purevolume.com/news/WATCH-Father-John-Misty-Performs-Bored-In-The-USA-On-Letterman-Announces-New-Album>. The article prominently featured the Photograph. A true and correct copy of the article is attached hereto as Exhibit B.

11. Upon information and belief, the article was written by the staff of Hive.

12. The Photograph appeared on Hive's servers.

13. Hive did not license the Photograph from Plaintiff for its article, nor did Hive have Plaintiff's permission or consent to publish the Photograph on its Website.

CLAIM FOR RELIEF
(COPYRIGHT INFRINGEMENT AGAINST HIVE)
(17 U.S.C. §§ 106, 501)

14. Plaintiff incorporates by reference each and every allegation contained in Paragraphs 1-13 above.

15. Hive infringed Plaintiff's copyright in the Photograph by reproducing and publicly displaying the Photograph on the Website. Hive is not, and has never been, licensed or otherwise authorized to reproduce, publically display, distribute and/or use the Photograph.

16. The acts of Defendant complained of herein constitute infringement of Plaintiff's copyright and exclusive rights under copyright in violation of Sections 106 and 501 of the Copyright Act, 17 U.S.C. §§ 106 and 501.

17. Upon information and belief, the foregoing acts of infringement by Hive have been willful, intentional, and purposeful, in disregard of and indifference to Plaintiff's rights.

18. As a direct and proximate cause of the infringement by the Defendant of Plaintiff's copyright and exclusive rights under copyright, Plaintiff is entitled to damages and Defendant's profits pursuant to 17 U.S.C. § 504(b) for the infringement.

19. Defendant's conduct, described above, is causing, and unless enjoined and restrained by this Court, will continue to cause Plaintiff irreparable injury that cannot be fully compensated by or measured in money damages. Plaintiff has no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests judgment as follows:

1. That Defendant Hive be adjudged to have infringed upon Plaintiff's copyrights in the Photograph in violation of 17 U.S.C §§ 106 and 501;
2. Plaintiff be awarded either: a) Plaintiff's actual damages and Defendant's profits, gains or advantages of any kind attributable to Defendant's infringement of Plaintiff's Photographs; or b) alternatively, statutory damages of up to \$150,000 per copyrighted work infringed pursuant to 17 U.S.C. § 504;
3. That Defendant be required to account for all profits, income, receipts, or other benefits derived by Defendant as a result of its unlawful conduct;
4. That Plaintiff be awarded his costs, expenses and attorneys' fees pursuant to 17 U.S.C. § 505;

5. That Plaintiff be awarded pre-judgment interest; and
6. Such other and further relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on all issues so triable in accordance with Federal Rule of Civil Procedure 38(b).

Dated: Valley Stream, New York
April 16, 2017

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